

Regulatory developments in the Netherlands

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Important regulatory developments

1. Changes in USO requirements
2. Announcement to redesign the financing of the USO
3. Renewal of the regulation on cost allocation and tariffs
4. Introduction of SMP regulation on the postal market
5. Concluding remarks

Background: negative development of USO results

Results after tax of USO activities were negative in

2010 -1.4 mln, -0.2 %

2011 -32.9 mln, -4.2%

2012 - 53.2 mln, -6.9%

Reported net cost of USO in 2011

- According the directive method (commercial approach) 107 mln
- According the method of Dutch Postal law 125 mln

1. Changes in the USO requirements to improve USO result

Extra possibilities to increase prices

- 2013, 13% and 2014, 8%
- Increase income: 40-45 mln

Monday delivery discontinued

- Volume development makes adjustment uso-requirements necessary: 9-10% volume decline expected
- Number of deliveries from 6 to 5, cost saving ca 20 mln
- Implementation in 2014

Postal outlets

- Decrease number from 2.500 to 1.000
- Cost saving: 8-11 mln
- Implementation expected 2015

Mail boxes

- Decrease number from 19.000 to 8.700
- Cost saving: 12-13 mln
- Implementation expected 2015

Impact

- Expected result in 2015 of USO-services is + 3% ROS. 2012 result of USO services was – 6.9 % (-53.2 mln)
- The possibility of net cost in the future can not be excluded. The current system that charges net cost to market players is 'undesirable' and this system of financing of net cost will be reviewed in the near future



2. Announcement to redesign the financing of the USO in case of net cost

Announcement

- The possibility of net cost in the future can not be excluded. The current system that charges net cost to market players is 'undesirable' and this system of financing of net cost will be reviewed in the near future

New regulation should take as assumption

- Market cannot bear the cost of the USO and market parties are no longer requested to pay for net cost of the USO

Timing

- Proposal for a change in the postal law will be developed this year.

3. Renewal of the regulation on cost allocation and tariffs

Cost allocation

- Clear confirmation of principles PostNL applies within the overall principle of cost causation
 - Cost of overservice USO can be allocated to the USO
 - Stand alone costing can be used for different service levels
- To exclude any possibility that cost are not correctly allocated additional guarantees are introduced and the role of the NRA is clarified
- Increased transparency: more information, more discussions, increased workload

Tariff regulation

- System: volume decline adjustment in price cap because significant part of the cost does not decline with same speed as volume in short term. Factor to be decided by the NRA

Timing

Both issues are covered by secondary regulation that is scheduled to be adjusted by the end of this year



4. Introduction of SMP regulation in the Netherlands

1. Reasoning behind SMP regulation

2. Content

1. Relationship with USO-regulation
2. SMP versus competition law
3. Instruments
4. Implementation

3. Evaluation from an operators perspective

1. Necessity not substantiated
2. Proportionality not clearly regulated
3. What can we expect?

4.1 Reasoning for SMP regulation

- **Benefits of competition endangered**
 - By a combination of market characteristics and volume decline with a party with significant market power
 - Risk of competition problems
 - Risk of keeping competitors off the market
 - Risk of direct harm of end users if withdrawal of market parties leads to a monopoly
- **The need for strong supervision and ex ante regulation**
 - Risk of major and irreversable effects on competition
 - Ex post regulation (competition law) doesn't solve issues (risk/potential issue)
 - Supervision instruments needed to take *preventive* action in order to help prevent major and irreversible consequences
 - Traditional postal market is expected to be a seperate market for next few years, despite substitution
 - Therefore the possiblity to impose specific obligations on an party with SMP is needed

4.3 Content SMP regulation

1. SMP versus USO-regulation
2. SMP versus competition law
3. Instruments
4. Implementation

4.3.1 SMP versus USO-regulation

- **Different scope**
 - Only applies to designated USO provider and only as provider of those USO services
- **SMP can interfere with USO-regulation**
 - Applies to all mail transport companies and all mail service
 - BUT: SMP framework cannot impose obligations concerning services that are part of the USO
 - However: obligations on the non-USO services can have effect on USO-services
 - Obligation to offer services unbundled
 - Obligation to apply cost-based tariffs, with certain, specified cost allocation

4.3.2 SMP regulation versus competition law

	Power to intervene on SMP	Power to intervene on abuse of position of economic power
Scope of application	Mail transport companies within scope of Postal Act	All markets that fall within scope of competition law
Objective	To reduce potential competition restrictions to a minimum. Immediate protection of the interests of end users.	Protection of effective competition
Reference point for intervention	The presence of significant market power is sufficient. Abuse is not a requirement.	The presence of a position of economic power. Abuse is a requirement.
Intervention method	Imposing specific obligations on parties with significant market power (ex ante)	Imposing sanctions when a business abuses a position of economic power (ex post)

4.3.3 Instruments for regulator (1): possible additional obligations for party with SMP

- **Transparency**
 - An obligation to publish relevant information
 - Quality of service
 - Technical specifications
 - Conditions for delivery
 - Rates
- **Unbundling, Non discrimination and quality obligation**
 - Obligation to provide certain services separately to prevent shifting market power from one market to another
 - Non discrimination: obligation to treat buyers of end user services equally to prevent price discrimination and increase of switching cost through loyalty discounts
- **Access**
 - Obligation to offer access to delivery network for the consumer segment to lower the threshold to enter the market
 - For the rates for access the ACM may stipulate application of cost based tariff for access based on certain cost allocation system

4.3.3 Instruments for regulator (2): possible additional obligations for party with SMP

- **Tariff regulation**

- For immediate protection of users drastic measures like prescription of maximum rates is possible, this a measure of last resort
- Obligation to apply cost based tariffs to prevent risk of predatory prices being applied
- Obligation to apply cost based tariffs to protect the interest of user in case there is only one provider on the market

- **Approval of tariffs**

- Possibility to impose an obligation to submit cost based tariffs for approval by NRA

- **Cost allocation**

- Obligation to keep separate accounts to better counteract market disruptive cross subsidies
- Accounting rules and information



4.3.4 Proces of implementation of SMP regulation

4 steps in implementation:

- **What is the relevant market?**
 - Decision of the authority on the relevant market. The effect of substitution of electronic alternatives should be taken into account. Market analyses should be according to competition rules
- **Is there a party with Significant Market Power on that market?**
 - A company that is, to a significant extend, able to conduct independently from its rivals, customers and consumers. This has to be established by the ACM.
- **What are the *potential* competition issues?**
 - By nature this is a theoretical exercise
- **How can this potential problem be addressed? Which obligations for the party with SMP will solve potential competition issue?**
 - Obligation for ACM to choose the solution with the least impact. An obligation is suitable if it is based on the nature of the problem identified on the market and proportional to the objective to prevent the possible competition issue.

4.4 Evaluation from an operators perspective

1. Necessity not substantiated
2. Proportionality not clearly regulated
3. What can we expect?



4.4.1 Necessity for SMP regulation is not substantiated

Market failure not evident

- Electronic substitution, shift from time sensitive to non-time sensitive delivery and competition by other network providers resulting in strong disciplining forces for PostNL
- Three criteria test before applying SMP regulation: ex ante regulation should only be used when general competition law is unable to solve issues.
 - Substantial and structural barriers to entry
 - Structure of market does not lead to effective competition
 - Market failure can not be addressed with general competition law

This test is not executed. If applied, PostNL expects it to fail. It is *assumed* that there is such a market situation. At the same time defining the relevant market should take substitution effects in to account

No actual problems

Only *hypothetical* problems are mentioned, no factual problems are presented. Competitor is growing and making profit.

Need for extra obligations unclear

The question whether the potential problems can be tackled with general competition law and existing specific regulation remains unanswered.



4.4.2 Proportionality in applying SMP is not guaranteed in proposal

- **Proportionality in applying SMP regulation not clearly regulated.**
 - How is this proportionality to be analysed? This should be explicitly regulated to create necessary clarity and certainty
- **No hierarchy of possible measures is established in the proposal**
 - Unclear what is considered a 'heavy' and what is considered a 'light' obligation
- **Negative impact is not explicitly taken in to account**
 - Reduced flexibility in offering services and using her network will harm PostNL
 - Transparency can harm competition
 - Obligations will affect USO
 - Access obligations will affect willingness to invest



4.4.3 What can we expect (1) ACM's view on

- **Market analysis the development of the postal market in the context of the wider communication market**
 - In line with competition law
 - Take electronic alternatives into account (non done so far)
- **The postal market according to the ACM up till now:**
 - National market for delivery of letter mail, international mail and parcels are different market
 - Whithin the national market for delivery of letter mail
 - Whole sale and retail
 - Segments:
 - Content
 - Type of client
 - Delivery time
 - Sorted/unsorted
- **According to the ACM no or little competition on several segments:**
 - Next day service level
 - Letter mail
 - Consumer and small enterprise



4.4.3 What can we expect (2)? ACM's view on:

- **Potential risks**
 - High tariffs, low quality
 - Selective low tariffs
 - Price discrimination, tying, restrictive conditions
- **Possible 'fitting' obligations**
 - Transparency on tariffs, conditions and rebates
 - No selective price differentiation, no tying or rebates that make shifting cost higher
 - Enhanced cost-orientation to prevent high prices and 'cross subsidies'
 - Cost allocation designed by ACM

5. Concluding remarks

Impact of changes in regulatory environment positive and negative

- **Changes in USO requirements, extra possibilities to increase prices necessary to avoid net cost as much as possible**
- **Impact of SMP regulation depends on implementation**
 - Market definition
 - SMP present?
 - Risks
 - Proportional obligation
- **But: Last thing you need in a fast declining market is SMP**
 - Adds significant regulatory uncertainty
 - Inclination of ACM is to help competitors
 - Possibly substantial commercial and operational impact

